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**IN THE
COURT OF APPEALS OF INDIANA**

QUINTON BALLS,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A05-0603-CR-110
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Jeffrey Marchal, Commissioner
Cause No. 49F08-0601-CM-159

September 18, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-defendant Quinton Balls (“Quinton”) appeals his conviction for possession of marijuana as a Class A misdemeanor.¹ We affirm.

Issue

Quinton raises two issues, which we restate as:

- I. Whether the trial court abused its discretion by admitting certain evidence at trial, which was obtained in violation of the Fourth Amendment of the United States Constitution.²
- II. Whether a proper chain of custody was established to support the admission of the marijuana obtained from Quinton’s person in a search subsequent to his arrest.

Facts and Procedural History

On January 1, 2006, the Indianapolis Police received a call from a person identifying himself as an employee of the Payless Shoe Store at 10th and Lynnwood reporting a suspicious person in front of the store whom was believed to be casing the store. The caller provided a description of the suspicious person as well as the employee’s name and telephone number at the store. Police Officer Stephanie Thompson (“Officer Thompson”) responded to the dispatch and upon arriving at the Payless Shoe Store she observed Quinton who matched the description provided by the caller.

¹ Ind. Code § 35-48-4-11.

² Quinton’s brief also makes the same argument based on Article I § 11 of the Indiana Constitution. However, at trial, Quinton’s arguments for the motion to suppress did not include any clear statement that the motion was based on this constitutional provision. Additionally, Quinton only used the terminology Terry stop, which is Fourth Amendment terminology, not that of the Section 11 reasonableness standard. Lacking any clear notion that the Indiana Constitution was a basis for the objection, Quinton has waived any claim under Article I § 11. See N.W. v. State, 834 N.E.2d 159, 162 n.2 (Ind. Ct. App. 2005), trans. denied (holding

Officer Thompson approached Quinton and asked him his name. Quinton responded with “Pierre Balls,” but Officer Thompson was unable to confirm that name. She then asked him again for his name and Quinton provided his correct name. After running a warrant check, Officer Thompson discovered there were two outstanding arrest warrants for Quinton. Officer Thompson placed Quinton under arrest.

Police Officer Sinnea McCoy (“Officer McCoy”) arrived on the scene to transport Quinton to jail. Officer McCoy searched Quinton and found a bag of what appeared to be marijuana in his pocket. Officer McCoy gave the bag to Officer Thompson who placed it in a heat-sealed envelope, sealed and labeled the envelope, and transported it to the Indianapolis Police property room and placed it in the vault for testing. Upon testing, the suspected substance in the bag found on Quinton’s person was later proven to be marijuana.

The State charged Quinton with Possession of Marijuana as a Class A misdemeanor. During the bench trial, Quinton made an oral motion to suppress the testimony of Officer Thompson on grounds that the stop of Quinton was unjustified, which the trial court judge denied as premature. Quinton later renewed his motion, arguing that the call received about Quinton was an anonymous tip because Officer Thompson did not confirm that the call came from the Payless Store by speaking with the employees before approaching Quinton. The trial court denied the motion for two reasons. First, the trial court found that the call was not an anonymous tip because the caller was an employee of a business. Second, “there were sufficient indicators of characteristics to establish identity and the witness has testified that

defendant waived review of his Indiana Constitutional argument because his objection at trial did not assert any violation of the Indiana Constitution).

she was able to collaborate that the individual that she spotted did match the general characteristics.” Tr. at 12.

After the State laid a foundation through the testimony of Officers Thompson and McCoy, it moved to admit the bag of marijuana as an exhibit. Quinton objected to its admission “for anything other than items that were retrieved from Mr. Balls. We would object to it being admitted as marijuana.” Tr. at 29. After the trial court clarified that the bag and its contents were being offered as the items removed from Quinton, Quinton stated that he did not have any objection to it being admitted.³

The trial court found Quinton guilty as charged. Quinton now appeals his conviction.

Discussion

I. Standard of Review

Quinton argues that the trial court abused its discretion by denying his motion to suppress the marijuana found on his person and by allowing it to be admitted as State’s Exhibit 1 over Quinton’s improper chain of custody objection. On the other hand, the State contends that Quinton has waived both of these arguments, because Quinton did not make these objections at the time the State moved to admit the exhibit. We agree with the State because at the time the State moved to admit the bag of marijuana Quinton stated that he had no objection to its admission. Hence, Quinton waived both of his arguments by failing to lodge a contemporaneous objection to the admission of the evidence. Brown v. State, 783 N.E.2d 1121, 1125 (Ind. 2003). In the absence of a contemporaneous objection, we review

the record for fundamental error, that which is a substantial, blatant violation of basic principles rendering the trial unfair and depriving the defendant of fundamental due process. Oldham v. State, 779 N.E.2d 1162, 1170 (Ind. Ct. App. 2002), trans. denied.

II. Analysis

A. Fourth Amendment

Quinton contends that the initial encounter between him and Officer Thompson constituted an illegal investigatory stop, in violation of the Fourth Amendment to the United States Constitution because it was only based on an anonymous call. We disagree. We need not reach Quinton's contention that the initiating call was anonymous, because the encounter between Officer Thompson and Quinton did not implicate the Fourth Amendment.

It is well settled that not all encounters between the police and citizens involve a "seizure" of the citizen. There are three levels of police investigation. Overstreet v. State, 724 N.E.2d 661, 664 (Ind. Ct. App. 2000), reh'g denied, trans. denied. First, the Fourth Amendment requires that an arrest or detention for more than a short period of time be supported by probable cause. Id. Second, police may, without a warrant or probable cause, briefly detain an individual for investigatory purposes if based on specific and articulable facts, the officer has a reasonable suspicion that criminal activity "may be afoot." Id. (quoting Terry v. Ohio, 392 U.S. 1 (1968)). Finally, the third level of investigation occurs when a law enforcement officer makes a casual and brief inquiry of a citizen, which involves neither an arrest nor a stop. Id. In this type of consensual encounter, no Fourth Amendment

³ Quinton made an objection to the admission of the marijuana based on improper chain of custody later in the trial during the testimony of Maxwell. However, as the trial court pointed out to Quinton, it had already been

interest is implicated. Id.

A consensual encounter includes a police officer approaching a person or vehicle that is already stopped and asking for identification. See Bentley v. State, 846 N.E.2d 300, 305-07 (Ind. Ct. App. 2006), trans. denied; Cochran v. State, 843 N.E.2d 980, 983-85 (Ind. Ct. App. 2006), reh'g denied, trans. denied; Overstreet, 724 N.E.2d at 664. As long as the person to whom the questions are put remains free to disregard the questions and walk away, there is no intrusion upon their liberty or privacy that requires justification. Overstreet, 724 N.E.2d at 664. “In the absence of some such evidence otherwise, inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of the person.” U.S. v. Mendenhall, 446 U.S. 544, 554 (1980).

In this case, no such evidence of an intrusion upon Quinton’s liberty or privacy was presented. The record only reveals that Officer Thompson approached Quinton and asked for his name. During the consensual encounter, Quinton provided an alternative name, “Pierre Balls.” Upon further inquiry, Officer Thompson discovered that there were outstanding warrants for Quinton’s arrest. Based on these warrants, there existed probable cause for the arrest, which led to the discovery of the marijuana. Therefore, we conclude that the trial court did not commit error, let alone fundamental error, by admitting the evidence obtained in the search of Quinton subsequent to his arrest.

B. Chain of Custody

Quinton also contends that the bag of marijuana should not have been entered into evidence because the State failed to maintain the integrity of the chain of custody. The State

admitted into evidence, so the objection was not timely.

bears a higher burden to establish the chain of custody of “fungible” evidence, such as marijuana, whose appearance is indistinguishable to the naked eye. Troxell v. State, 778 N.E.2d 811, 814 (Ind. 2002). To establish a proper chain of custody, the State must provide reasonable assurances that the evidence remained in an undisturbed condition. Id. However, a perfect chain of custody need not be established by the State. Once the State “strongly suggests” the exact whereabouts of the evidence, the gaps go to the weight of the evidence and not admissibility. Id. Furthermore, there is a presumption of regularity in the handling of evidence by officers, and there is a presumption that officers exercise due care in handling their duties. Id. To mount a successful chain of custody challenge, one must present evidence that does more than raise a mere possibility that the evidence may have been tampered with. Id.

Officer Thompson testified that when she received the suspected bag of marijuana from Officer McCoy she placed it in a heat-sealed envelope, labeled it, and transported it to the property room, placing it in the narcotics vault so that it could be tested. Thompson testified that State’s Exhibit 1 was the same envelope that she had received from Officer McCoy, recognizing it as the same evidence recovered from Quinton through her handwriting and labeling on the envelope. She also testified that the envelope was in the same condition as she saw it last except for the opening made for testing the substance. Glenn Maxwell, the chemist who analyzed the substance, testified at trial that State’s Exhibit 1 was the item that he picked up and analyzed. He also testified that the yellow stickers on the evidence envelope contained the dates on which he sealed the bag and his initials. After

resealing the bags and placing the stickers on them, Maxwell sealed the external bag and placed it in his locker in the chemistry lab vault until he returned the entire envelope to the property room on the day of the trial. The only question raised by Quinton in the chain of custody is who brought the evidence envelope from the property room to the courtroom on the day of the trial. Quinton raises only a mere possibility that the evidence may have been tampered with. He can point to no other evidence or circumstances that would indicate State's Exhibit 1 was not in its original condition. Therefore, there was no error in admitting the evidence, let alone fundamental error.

For the foregoing reasons, we affirm Quinton's conviction for possession of marijuana as a Class A misdemeanor.

Affirmed.

RILEY, J., and MAY, J., concur.